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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,404	01/14/2002	Bernard M. Werner	HI03027USU P02017US	2074
7590	02/04/2005		EXAMINER	
JENNIFER H. HAMMOND THE ECLIPSE GROUP 10453 RAINTREE LANE NORTHRIDGE, CA 91326			DABNEY, PHYLESHA LARVINIA	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/046,404	WERNER, BERNARD M.
	<b>Examiner</b>	<b>Art Unit</b>
	Phylesha L Dabney	2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 23 January 2005.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-8 and 11-14 is/are pending in the application.

4a) Of the above claim(s) 9 and 10 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 and 11-14 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. <u>1/23/05</u> .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

**DETAILED ACTION**

This action is in response to the interview conducted on 21 December 2004 in which claims 1-8 and 11-14 are pending. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Klayman (U.S. Patent No. 3,930,561).

Regarding claims 1 and 5-6, Klayman teaches an acoustic waveguide, comprising: a first control curve; a second control curve; a third control curve; a fourth control curve; and a continuous three-dimensional least-energy-surface coincident with the first control curve, the second control curve, the third control curve and the fourth control curve that intersect a circular throat end and a non-elliptical closed control curve that defines a mouth.

Regarding claim 2, Klayman teaches the continuous three-dimensional least-energy-surface is free of discontinuities (fig. 1; col. 2 line 59 through col. 3 line 24).

Regarding claim 3, Klayman teaches the continuous three-dimensional surface further includes: a minimum surface area axial section plane of the continuous three-dimensional surface

formed from the first control curve, second control curve, third control curve, and fourth control curve (fig. 1; col. 2 line 44 through col. 3 line 24).

Regarding claims 4 and 11, Klayman teaches the minimum surface area axial section plane is at the circular throat end of the acoustic waveguide (figs. 1-2; col. 2 line 44 through col. 3 line 24).

Regarding claim 7, see the rejection of claim 1.

Regarding claim 8, see the rejection of claim 2.

Regarding claim 12, see the rejection of claims 1 and 2.

Regarding claim 13, see the rejection of claims 1, 3, and 11.

Regarding claim 14, see the rejection of claims 1 and 2 and figures 3-4 of Klayman.

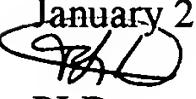
### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L Dabney whose telephone number is 703-306-5415. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 27, 2005

  
PLD

  
CURTIS KUNTZ  
ADVISORY PATENT EXAMINER  
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